

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**THE DETROIT EDISON COMPANY** )  
for reconciliation of its choice incentive ) Case No. U-16262  
mechanism. )  
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At the April 12, 2011 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Greg R. White, Commissioner

**ORDER**

History of Proceedings

On March 15, 2010, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting reconciliation of its choice incentive mechanism (CIM) for the period from January 14, 2009 through December 31, 2009. Detroit Edison claimed that actual sales to electric choice customers fell within the deadband established in previous Commission orders<sup>1</sup>.

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<sup>1</sup>See, the Commission's August 31, 2006 order in Case No. U-14838 (August 31 order); the Commission's December 23, 2008 order in Case No. U-15244 (December 23 order); and the Commission's January 11, 2010 order in Case No. U-15768 (January 11 order), discussed in more detail, *infra*.

A prehearing conference was held on July 15, 2010 before Administrative Law Judge Mark E. Cummins (ALJ). The ALJ granted intervenor status to the Association of Businesses Advocating Tariff Equity (ABATE). The Commission Staff (Staff) also participated in the proceedings.

An evidentiary hearing was held on October 26, 2010. Detroit Edison presented the testimony of one witness. ABATE and the Staff waived cross-examination of Detroit Edison's witness and did not offer any witnesses of their own. On March 4, 2011, the ALJ issued his proposal for decision (PFD). No exceptions to the PFD were filed by any party.

#### Positions of the Parties

Detroit Edison's sole witness, Theresa M. Uzenski, is the Manager of Regulatory Accounting and testified to the company's calculation and allocation of the CIM for the stated period. Ms. Uzenski testified that the actual electric choice sales from January 14, 2009 through the end of the year were 1,477 gigawatt-hours (GWh) and that this figure was within the +/- \$7.3 million deadband established in the previous Commission orders.

Ms. Uzenski further testified that her calculations reflect prorated sales levels established in the December 23 and January 11 orders due to Detroit Edison's self-implementation of new rates on July 26, 2009. Ms. Uzenski stated that, based on those calculations, there were no assets or liabilities created pursuant to the CIM in 2009.

The Staff supported the position of Detroit Edison stating that the calculated sales level resulted in no incremental increase or decrease in non-fuel revenue for the reported period. The Staff further agrees that Detroit Edison's electric choice sales during the period in question were within the deadband and that no refund or surcharge is required.

ABATE did not dispute the calculations or allocations provided by Detroit Edison for this proceeding, but rather argued generally that single expense trackers like the CIM are illegal

because the Commission is without authority to approve them. ABATE further contends that the CIM represents impermissible retroactive ratemaking because it is designed to recover prior costs incurred by the utility. More specifically, ABATE alleges that the mechanism is designed to compensate the utility for any increase over and above the amount of electric choice sales established in the base electric rates. Because the Commission has already approved the basic rate as just and reasonable for a particular period, ABATE argues, any adjustment to the previous base rate is, *a priori*, a violation of the prohibition against retroactive ratemaking.

#### Proposal for Decision

Following an exhaustive discussion of prior cases supporting the use of tracking mechanisms, the ALJ rejected ABATE's contention that the CIM is *per se* illegal for lack of specific statutory authority.

The ALJ further dispensed with ABATE's argument that the CIM represents retroactive ratemaking. The ALJ agreed with Detroit Edison and the Staff in that the CIM actually operates as a prospective rate adjustment device. The ALJ stated that "the CIM simply adjusts the rates to be charged by the utility in the future based on the actual level of sales made to electric choice customers during the prior year." PFD, p. 8. Thus, the ALJ continued, the operation of the CIM is not a re-adjustment of a previously-charged rate and does not violate the prohibition against retroactive rate making.

As to the evidence pertaining to the CIM presented by Detroit Edison, the ALJ recommends that the Commission accept Ms. Uzenski's uncontroverted calculations and allocations. The ALJ further recommends that the Commission approve Detroit Edison's application in its entirety, and rule that no refund or surcharge related to the CIM is required for the period in question.

## Discussion

The Commission's August 31 order approved a settlement agreement that, among other things, established the CIM for Detroit Edison. The CIM was designed to create an incentive for the utility to further reduce certain costs. The August 31 order directed Detroit Edison to reconcile actual 2007 electric choice sales with the 3,400 GWh base sales level assumed as stated in the settlement agreement, and adjusted for a 200 GWh deadband.

The Commission's December 23 order re-established the CIM for the utility, and (1) added a sharing mechanism for any decline in sales, (2) removed the rate cap on non-fuel power supply revenue, and (3) recalculated the CIM base level sales to be 1,561 GWh. The Commission's January 11 order increased base level of sales to 1,586 GWh, and provided that if a 12-month reconciliation period for any tracker or decoupling mechanism covers a period of time during which the utility self-implemented rates as allowed by MCL 460.6a(1), that the actual value being tracked during the corresponding self-implementation period must be reconciled with the level of expenses reflected in Detroit Edison's most recent rate case.

The Commission finds that Detroit Edison filed its March 15, 2010 application in accordance with the applicable provisions of the previous orders discussed and is approved in its entirety. The Commission, thus accepts the uncontroverted testimony of Ms. Uzenski, and agrees that no refund or collection is required concerning the CIM for the period from January 14, 2009 through December 31, 2009.

As to the arguments related to the legality of the CIM offered by ABATE, the Commission finds that they are not well taken. The Commission adopts in full the well reasoned analysis of the ALJ related to this issue and does not find it necessary to address it further in this order.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's application for reconciliation of its choice incentive mechanism for the period of January 14, 2009 through December 31, 2009 is approved.

B. No refund or collection related to The Detroit Edison Company's choice incentive mechanism is required for the period of January 14, 2009 through December 31, 2009.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Greg R. White, Commissioner

By its action of April 12, 2011.

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Mary Jo Kunkle, Executive Secretary